MEDICAL JURISPRUDENCE[1]

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Occasionally, the question is asked why nurses should be compelled to devote a part of their time to lectures on medical jurisprudence during their training. It is of importance for the nurse to know something about law in general and the application of the laws involving medical questions. It is important, also, to have some conception of the relation of the physician to his patient; of the obligations of the patient to his physician; of the relations and obligations of the hospital to the community and to its patients. To the nurse who contemplates administrative work, this knowledge is essential. Law with its enforcement constitutes the foundation of society and is necessary for the life of any organization.

Law, in its widest sense, is a rule of action prescribed by a superior, which the inferior is bound to obey.[2] Law, in its technical sense, is a rule of civil conduct, prescribed by competent political authority, commanding certain things as necessary to, and forbidding certain things as inconsistent with, the peace and order of society. Law in this latter sense, is of two kinds, international and municipal. International law is that rule of civil conduct which is prescribed by the common consent of the nations of the world, and regulates their intercourse with one another. Municipal law is that rule of civil conduct which is prescribed by the supreme power in a state, and regulates the intercourse of the state with its subjects and of those subjects with each other.

American municipal law is of two kinds, Federal and State. Federal law is that rule of civil conduct which is prescribed by the supreme power in the United States, and regulates, in matters of a national character, the intercourse of the Federal government with the people, and of the people with each other or with citizens of foreign states. State law is that rule of civil conduct which is prescribed by the supreme power of each individual state and regulates, in all matters not of a national character, the intercourse of such state with its own people and of its people among themselves.

Unwritten and written law. American municipal law is, as to its origin, of two kinds, unwritten and written. Unwritten law, known also as common law, is that rule of civil conduct which originated in the common wisdom and experience of society, which in time became an established

[1] Lectures delivered to the junior class of nurses of the Norwegian Lutheran Deaconesses Hospital Training School, Brooklyn, N. Y.

[2] I am indebted for legal definitions to the excellent work by Hugh E. Culbertson on Medical Men and the Law.

custom, and which has finally received judicial sanction and affirmance in the decisions of the courts of last resort. Written law is that rule of civil conduct which has been prescribed directly, in so many words, by the supreme power of the state itself.

The United States, as such, has no common or unwritten law. When its courts are called upon to administer the principles of that law, they are guided by it as it exists in the state where the cause arose. In the individual states, except one, the courts have assumed, or the legislatures or constitutions have declared, the written and unwritten law of England, as it existed at the time of the Revolutionary War, to be the common law of such states, so far as it was applicable to the situation of their people.

The written law of the United States consists of the Federal Constitution, the Acts of Congress, and the treaties made by its authority. The written law of each individual state consists of its constitution and its statutes.

The law protects health as follows: (1) By giving to the party whose health is endangered, the right to remove the cause of danger, whenever this can be done without disturbing the public's peace; (2) by punishing, as criminal offences, those actions or omissions which endanger health; (3) by giving compensation to the injured person in a suit at law; (4) by compelling the person in whose actions or omissions the cause of danger has originated to remove it.

Jurisprudence is the science of law, or it is the body of laws existing in a given state or nation. Medical jurisprudence, sometimes called forensic medicine, is the science which applies the principles and practice of the different branches of medicine to the clearing of doubtful questions in a court of justice.

The duty of the physician to his patient. In the relation existing between the physician or surgeon and the patient, there is an implied contract which requires that he shall use ordinary skill and knowledge in any case. There is no implied contract that he will effect a cure. He is under no obligation to accept a call, and it is not until he accepts a person as a patient that his duties and the corresponding obligations arise. Upon consenting to treat a patient it becomes his duty to use reasonable care and diligence in the exercise of his skill and the application of his learning to aid the patient. He is expected to have and to use the ordinary knowledge and skill of the present time, in other words, to have the accepted knowledge of the practices of the present time. He must use his best judgment, but he cannot be held liable for an error of judgment if he exercises ordinary care and diligence with a patient. Ordinarily, good judgment is necessarily implied in the possession of ordinary skill. The physician is not responible for errors of judgment, for mere mistakes in cases of reasonable doubt and uncertainty.

The employment of a physician continues while sickness lasts, unless terminated by the assent of the parties, or revoked by the express dismissal of the physician. Where the employment of the physician has been terminated, he may refuse further attendance and such refusal will not justify the admission of evidence that the same amounted to improper treatment. A physician who leaves a patient at a critical stage of the disease, without reason, or sufficient notice to enable the party to procure another medical attendant, is guilty of a culpable dereliction of duty.

A physician is not required to be infallible in diagnosticating diseases, so that the fact that a patient's disease was different than it was diagnosed is not evidence of negligence. It is the duty of the physician to inform the patient, or those having charge of him, as to all reasonable instructions concerning the treatment and care of the particular case, not only for the period during which the physician is attending the patient, but also for the period of convalescence. The physician, however, is not bound to anticipate and advise against improbable conduct on the part of the patient. The failure to give any instruction when such instruction should be given, or the giving of erroneous instructions will render a physician liable for malpractice, if injury results.

It is the duty of physicians who are attending patients with infectious or contagious diseases, when called to attend other patients not so infected, to take all such precautionary means as experience has proved to be necessary to prevent its being communicated to other patients. The law requires the use of all possible care to prevent the spread of smallpox and other contagious diseases.

So intimate is the knowledge which comes to the physician in a professional way concerning a patient, that nearly all of the states have enacted statutes forbidding the disclosure in evidence, against the will of the patient, of information acquired by physicians in this professional capacity.

The transference of gifts of value from a patient to a physician is always looked upon with suspicion, the probability of undue influence is always inferred; in such cases it is the duty of the physician to show expressly that the gift is made without any suspicion of undue influence.

The duty of the patient to his physician. It is the duty of the patient to coöperate with his physician and to conform to his prescriptions and directions; if he should neglect to do so he cannot hold the physician responsible for his own negligence. A patient cannot recover, when, by his own acts, he has rendered it impossible to determine whether the suffering and pain complained of were caused by his own negligence or not; for example, when by his own voluntary act he leaves the hospital before he ought to do so, and makes it impossible to tell whether or not he would have been cured had he remained.

The most common form of contributory negligence on the part of the

patient is that in which he disobeys the instructions of his physician; for it is the duty of a patient to coöperate with his physician and to obey all necessary instructions. So, if a surgeon tells his patient to visit him again as soon as he feels any pain and, though he felt pain for a week, he did not return according to the instructions, the surgeon is exonerated for the resulting injury. If a physician requests the employment of another physician for consultation and to assist in administration of an anesthetic, and the patient refuses or neglects to secure it, the physician will not be liable for the permanent injury resulting, when such assistance would have rendered the injury only temporary. Likewise, if a patient who is directed by his physician to observe absolute rest as a part of the treatment of an injured foot, negligently fails to observe such direction, or purposely disobeys the same, he cannot recover if such disobedience proximately contributes to the injury of which he complains.

In statutes prohibiting work or labor on Sunday there is usually an exception made in favor of works of charity or necessity. It has been uniformly held that the employment of a physician and a promise to pay him is not unlawful because made on Sunday.

Malpractice. Malpractice is the negligent performance by a physician of the duties which have devolved and are incumbent upon him on account of his contractual relations with his patient. Criminal malpractice is that branch of malpractice in which the state initiates the proceedings under the provisions of the criminal law. Wilful malpractice is the deliberate administering of medicines or the performing of an operation by a physician which he knows and expects will result in damage or death to the individual under his care, as in the case of criminal abortion. Ignorant malpractice is the administration of medicines calculated to do injury, which do harm, and which well educated and scientific medical men would know were not proper in the case.

The law relating to malpractice is simple and well settled, although not always easy of application. By accepting a case, a physician or surgeon implies that he possesses—and the law places upon him the duty of possessing—that reaonable degree of learning and skill that is ordinarily possessed by physicians and surgeons in localities similar to that where he practices. Upon consenting to treat a patient it becomes his duty to use reasonable care and diligence in the exercise of his skill and the application of his learning to accomplish the purpose for which he is employed. He is bound to keep abreast of the times in knowledge. A physician does not have to guarantee a cure. Freedom from errors of judgment is never contracted for by the physician, and an error of judgment in the treatment of a case does not amount to malpractice, unless so gross as to be inconsistent with due care; nor can malpractice be inferred from the mere result of the treatment.

The fact that a physician or surgeon renders services gratuitously does not affect his duty to exercise reasonable and ordinary care, skill and diligence. A physician who is a regular physician of a hospital, owes precisely the same duty with reference to the care he shall use to a charity patient as he does to a patient who pays him for his services, and is liable for neglect accordingly.

A wrong impression as to the duty of a physician to attend every sick person who demands his services seems to have taken root in the minds of a great many misinformed persons. It is undoubtedly the law that a physician is not liable at common law for refusing to attend a sick person who demands his services. In at least one state it has been held that he is under no obligation to respond to a call by reason of the fact that he holds a state license to practice medicine, and although he is a family physician and no other physician is procurable, he is not liable for the death of a person caused by such refusal to render medical assistance.

A physician who negligently or ignorantly writes a prescription is liable in damages for the injury resulting therefrom.

A physician who communicates to his patient an infectious disease is responsible in damage for the suffering, loss of time, and danger to which the patient may be subjected. A surgeon is liable in damages wheere he directs his patient's wife to assist in dressing a wound, knowing that there is danger of infection, but negligently assuring her that there is no such danger, and when she, relying on his advice, becomes infected with poison.

(*To be continued*)

BEGINNINGS OF CANCER

"Cancer now accounts for one death in eight among women and one in fourteen among men over the age of 40," continued the speaker, "and during the last 25 years there has been an increase of 25 per cent in the recorded cancer death rate. Yet the whole matter of the prevention or cure of this disease has taken on a new phase in the last 10 or 15 years. Americans have in many ways been pioneers both in the study of the causes of cancer and in efforts to cure it and teach the public the means of prevention. Early diagnosis is the first great essential. We have learned that cancer starts from a small local beginning and that all lesions such as small sores and lumps that do not go away and that are ubject to irritation represent cancer possibilities for middle or later life. Chronic sores or sore spots, defective places in the body, unhealed wounds or old injuries, especially anything in the form of a sore that will not heal, is a cancer possibility. It is in a weak spot, usually, that a cancer develops."

From an address by Dr. Harvey R. Gaylord at the Woman's Hospital, Buffalo, N. Y.